

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 919**

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**Introduced by Assembly Member Nava**

February 26, 2009

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~~An act to amend Section 2929.3 of the Civil Code, relating to foreclosure.~~ *An act to add Section 2948.2 to the Civil Code, and to amend Section 27288.1 of the Government Code, relating to mortgages.*

LEGISLATIVE COUNSEL'S DIGEST

AB 919, as amended, Nava. ~~Foreclosure: vacant properties.~~ *Mortgages: information and recordation.*

*(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, in order to exercise a power of sale, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder in the county where the mortgaged or trust property is situated, a notice of default. Existing law provides a form for a mortgage of real property. Existing law requires a county recorder, upon proper payment, to accept any instrument authorized by statute to be recorded, provided that it meets specified requirements. Existing law requires certain documents relating to real property that are to be recorded to contain specified information.*

*This bill would require a mortgage or deed of trust that is secured by residential real property to have an attached rider that identifies by name the appraiser, lender, loan originator, and real estate broker, as defined, who were involved in the origination of the mortgage or deed of trust and his or her professional license number, if any. The bill would prohibit a county recorder from accepting a mortgage or deed of trust for recordation if a completed rider is not included. By creating*

*a duty for a county recorder to examine a mortgage or deed of trust to establish if a completed rider has been included, this bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law prohibits a governmental entity from imposing fines on a legal owner under both these provisions and a local ordinance.~~

~~This bill would make nonsubstantive, technical change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 2948.2 is added to the Civil Code, to read:*
- 2     *2948.2. (a) A mortgage or deed of trust that is secured by*
- 3     *residential real property shall have attached a rider that identifies*
- 4     *by name each of the following participants in the origination of*
- 5     *the mortgage or deed of trust and his or her professional license*
- 6     *number, if any:*
- 7         *(1) Appraiser.*
- 8         *(2) Lender.*
- 9         *(3) Loan originator.*
- 10        *(4) Real estate broker.*
- 11     *(b) For purposes of this section:*
- 12        *(1) "Appraiser" means a person who is, or should be, licensed*
- 13     *under Part 3 (commencing with Section 11300) of Division 4 of*
- 14     *the Business and Professions Code.*

1 (2) “Lender” means the secured creditor or creditors named  
2 in the debt obligation and document creating the lien.

3 (3) “Loan originator” means a person who, for compensation  
4 or gain or in the expectation of compensation or gain, takes a  
5 residential mortgage application or offers or negotiates the terms  
6 or a residential mortgage loan. “Loan originator” does not  
7 include:

8 (A) A person engaged solely as a loan processor or underwriter.

9 (B) A person or entity that performs only real estate brokerage  
10 activities and is licensed or registered in accordance with  
11 California law, unless the person or entity is compensated by a  
12 lender, a mortgage broker, a loan originator, or by any agent of  
13 those parties.

14 (C) A person or entity that is involved solely in an extension of  
15 credit relating to a timeshare plan as defined in Section 101 of  
16 Title 11 of the United States Code.

17 (4) “Residential mortgage loan” means a credit transaction  
18 that is secured by residential real property that is improved by  
19 four or fewer residential units.

20 SEC. 2. Section 27288.1 of the Government Code is amended  
21 to read:

22 27288.1. (a) All documents described in this section now or  
23 hereafter authorized by law to be recorded in the official records  
24 of a county shall contain the following information in addition to  
25 any information as may be required by law pertaining to the  
26 particular document:

27 ~~(a)~~

28 (1) If the document effects or evidences a transfer or  
29 encumbrance of an interest in real property, the name or names in  
30 which the interest appears of record, except that a notice of  
31 assessment recorded pursuant to Section 3114 of the Streets and  
32 Highways Code, a notice of special tax lien recorded pursuant to  
33 Section 3114.5 of the Streets and Highways Code, and a notice of  
34 award of contract recorded pursuant to Section 5248 of the Streets  
35 and Highways Code, shall show the name or names of the assessed  
36 owners as they appear on the latest secured assessment roll.

37 ~~(b)~~

38 (2) If the document releases or terminates any interest, right or  
39 encumbrance, it shall contain or have appended thereto all of the  
40 names of those persons and entities owning the title or interest

1 being relieved by the document, or the names of the owners of that  
2 title or interest as they appeared at the time and in the document  
3 creating the interest, right or encumbrance.

4 (e)

5 (3) In cases where the county tax collector is filing purchaser's  
6 deeds with respect to a sale for defaulted taxes, those documents  
7 shall be deemed to constitute compliance with this section.

8 No

9 (b) No document subject to this section shall be recorded or  
10 indexed in the official records of a county unless it contains the  
11 information required by this section as well as any additional  
12 information required by law pertaining to the particular document,  
13 but the recorder may rely upon the information contained in, or  
14 appended to, the document being offered for record. The failure  
15 of any document to include all of the names required by this section  
16 shall not affect the constructive notice which would otherwise be  
17 afforded by the recording of the document. This section shall not  
18 apply to a vacation or abandonment by a public agency of a public  
19 highway or road.

20 (c) The recorder shall not accept for recordation any mortgage  
21 or deed of trust executed after January 1, 2010, unless it includes  
22 a completed rider as required by Section 2948.2 of the Civil Code.

23 SEC. 3. If the Commission on State Mandates determines that  
24 this act contains costs mandated by the state, reimbursement to  
25 local agencies and school districts for those costs shall be made  
26 pursuant to Part 7 (commencing with Section 17500) of Division  
27 4 of Title 2 of the Government Code.

28 SECTION 1. ~~Section 2929.3 of the Civil Code is amended to~~  
29 ~~read:~~

30 ~~2929.3. (a) (1) A legal owner shall maintain vacant residential~~  
31 ~~property purchased by that owner at a foreclosure sale, or acquired~~  
32 ~~by that owner through foreclosure under a mortgage or deed of~~  
33 ~~trust. A governmental entity may impose a civil fine of up to one~~  
34 ~~thousand dollars (\$1,000) per day for a violation. If the~~  
35 ~~governmental entity chooses to impose a fine pursuant to this~~  
36 ~~section, it shall give notice of the alleged violation, including a~~  
37 ~~description of the conditions that gave rise to the allegation, and~~  
38 ~~notice of the entity's intent to assess a civil fine if action to correct~~  
39 ~~the violation is not commenced within a period of not less than 14~~  
40 ~~days and completed within a period of not less than 30 days. The~~

1 notice shall be mailed to the address provided in the deed or other  
2 instrument as specified in subdivision (a) of Section 27321.5 of  
3 the Government Code, or, if none, to the return address provided  
4 on the deed or other instrument.

5 (2) The governmental entity shall provide a period of not less  
6 than 30 days for the legal owner to remedy the violation prior to  
7 imposing a civil fine and shall allow for a hearing and opportunity  
8 to contest any fine imposed. In determining the amount of the fine,  
9 the governmental entity shall take into consideration any timely  
10 and good faith efforts by the legal owner to remedy the violation.  
11 The maximum civil fine authorized by this section is one thousand  
12 dollars (\$1,000) for each day that the owner fails to maintain the  
13 property, commencing on the day following the expiration of the  
14 period to remedy the violation established by the governmental  
15 entity.

16 (3) Subject to the provisions of this section, a governmental  
17 entity may establish different compliance periods for different  
18 conditions on the same property in the notice of alleged violation  
19 mailed to the legal owner.

20 (b) For purposes of this section, “failure to maintain” means  
21 failure to care for the exterior of the property, including, but not  
22 limited to, permitting excessive foliage growth that diminishes the  
23 value of surrounding properties, failing to take action to prevent  
24 trespassers or squatters from remaining on the property, or failing  
25 to take action to prevent mosquito larvae from growing in standing  
26 water or other conditions that create a public nuisance.

27 (c) Notwithstanding subdivisions (a) and (b), a governmental  
28 entity may provide less than 30 days’ notice to remedy a condition  
29 before imposing a civil fine if the entity determines that a specific  
30 condition of the property threatens public health or safety and  
31 provided that notice of that determination and time for compliance  
32 is given.

33 (d) Fines and penalties collected pursuant to this section shall  
34 be directed to local nuisance abatement programs.

35 (e) A governmental entity shall not impose fines on a legal  
36 owner under both this section and a local ordinance.

37 (f) These provisions shall not preempt any local ordinance.

38 (g) This section shall only apply to residential real property.

1     ~~(h) The rights and remedies provided in this section are~~  
2     ~~cumulative and in addition to any other rights and remedies~~  
3     ~~provided by law.~~

4     ~~(i) This section shall remain in effect only until January 1, 2013,~~  
5     ~~and as of that date is repealed, unless a later enacted statute, that~~  
6     ~~is enacted before January 1, 2013, deletes or extends that date.~~